

THE  
DEFENCE

OF

FRANCIS,

Late Lord Bishop of *ROCHESTER*,

At the BAR of the

House of LORDS,

On *Thursday* the 9th, and *Saturday* the 11th,  
of *May*, 1723.

AGAINST THE

BILL then depending for inflicting PAINS  
and PENALTIES on him.

---

BY

S<sup>r</sup> *CONSTANTINE PHIPPS* Kn<sup>t</sup>,  
One of His Lordship's Counfel.

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*Publish'd by His own Appointment; and in part  
actually Printed before His Death.*

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LONDON:

Printed for JONAH BOWYER, at the *Rose* in  
*S<sup>t</sup> Paul's Church-Yard*. 1723.



THE  
DEFENCE

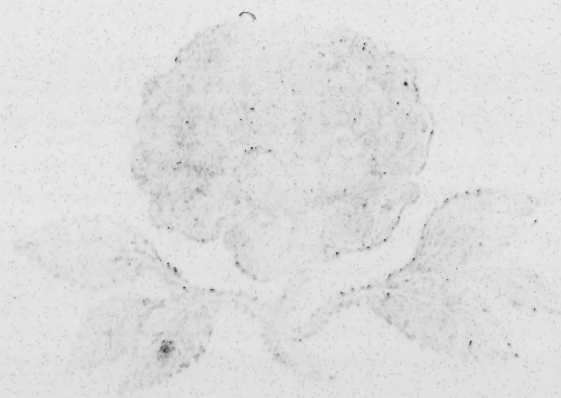
OF A N C I S

OF LORDS

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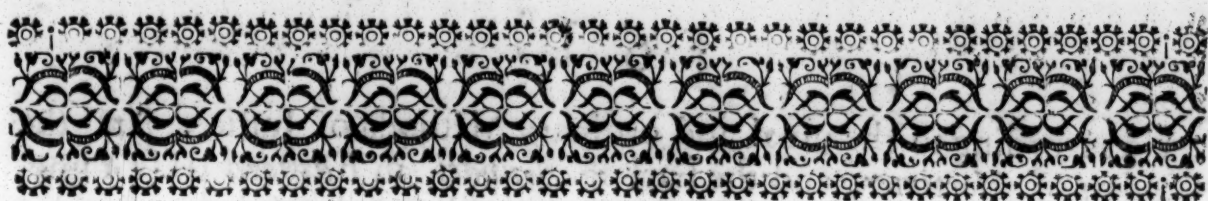
ST. GEORGE'S CHURCH  
OF THE HOLY TRINITY

Printed by the Rev. J. B. Bowyer, at the  
St. Paul's Church, York, 1752.



Printed for Jonathan Bowyer, at the  
St. Paul's Church, York, 1752.





Sir *CONSTANTINE PHIPPS's*

# DEFENCE

OF

The late Bishop of *ROCHESTER, &c.*

*My Lords,*



Y the Appointment of This Honourable House, I have the Honour to attend Your Lordships, as Counsel for the Reverend Prelate, the unfortunate Prisoner at the Bar: And persuade myself it will not be difficult to defend His Lordship from the heavy *Pains* and *Penalties* of This Bill; since the Counsel for it confess that it is supported *only* by *Circumstantial* Evidence.

Bills passing into Laws for taking away Mens Liberties and Estates by *Circumstances* only, are new. Convictions by Circumstances were never heard of in Ages Past; and I hope will never be known in This, or Any which is to come: And tho' one of the Gentlemen said that *Circumstantial* Evidence is sufficient at *This Time of Day*; I hope, the Law is the same at *This Time of Day*, as ever; and that the Lives and Fortunes of *English* Subjects will be as well protected and defended by *Your Lordships*, as they were by *Your Predecessors*.

The Securities, which the Laws have provided for our Liberties and Estates, and the Happiness, that we cannot be depriv'd of them, but by full and legal Proof, are Advantages, which were obtain'd at great Expense of Blood and Treasure, by Your Lordships Noble Ancestors: And we doubt not but You will transmit Them to Posterity as entire; as they have been continued down to Your Lordships.

The Law is the Rule of Men's Actions; And Persons accused as Criminals for Facts committed by them, ought to be tryed by the Laws that were in Force at the Time of the Facts committed, *secundum Allegata & Probata*. But Laws made *Ex Post Facto*, to Punish Men for Facts which were not Offences when they were committed, render all things that are dear to *Englishmen* precarious; and for That Reason have been as often condemn'd, as they have been made.

The Charge against the Bishop and Mr. Kelly are so interwoven; that I beg you will excuse me, if, in my Vindication of Him, I urge any Thing, which I offer'd in Behalf of Mr. Kelly, when I had the Honour to attend Your Lordships as His Counsel: But I shall take Care to repeat no more than is Necessary.

*My Lords*, I am very far from denying, or contesting, the Power of Parliaments as to Bills of *Attainder*; But I hope, I may have Leave to observe that such a Power hath been very *rarely exerted*, unless upon *extraordinary* Occasions, and in Cases of *Necessity*: I hope too I may be permitted to shew, that the Case of My Lord Bishop is not within Either of Those Reasons.

He never withdrew Himself out of the Kingdom; never fled from Justice, but was always amenable and forth-coming, ready to

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be try'd according to the usual and ordinary Methods of Justice. And the Attainders of *Mortimer*, and the Earl of *Arundel*, in *Edward III.*'s Time, of Sir *Thomas Haxey* in *Richard II.*'s Time, and Others afterwards, were revers'd ; because the Persons accused were forth-coming, and might have been brought to a Tryal according to the usual Course of Justice. Wherefore, I hope the same Reasons which prevail'd with Those Parliaments to reverse Those Attainders, will have Weight enough with Your Lordships to prevent This Bill's passing into a Law.

The Parliament, at the Restoration, did not think fit to interpose their Legislative Authority even in the Case of the *Regicides* ; but left such of them, as were alive, and forth-coming, to the ordinary Methods of Justice, and gave them a *fair Tryal* for their Lives and Estates. The only remarkable Bill of Attainder, which hath been in some Ages (except of such as were in *actual Rebellion*, or *fled* from Justice) was That of Sir *John Fenwick*. I own, I mention'd This Case on Behalf of Mr. *Kelly* ; and it being a Case so material for My Lord Bishop's Defence, I cannot in Justice to His Lordship omit making some Observations upon it : From which it will appear, that the *Reasons* given for *passing* That Bill are the strongest Arguments in the World *against* This.

The Preamble of Sir *John Fenwick*'s Attainder shew'd the Necessity of it : For the Preamble sets forth, --- That Sir *John Fenwick* was upon the Oaths of *George Porter*, and *Cardel Goodman*, indicted of High Treason ; That he obtain'd His Majesty's Favour to have his Tryal delay'd from time to time, upon his repeated Promises of making an ingenuous and full Confession : That several times were appointed for his Tryal ; at one of which he had been actually try'd, had it not been for the Expectation of the Discoveries so often promis'd ; That since the times appointed for his Tryal, *Cardel Goodman* one of the Witnesses was withdrawn, so that he could not be had to give Evidence. And it appear'd upon the Tryal, that *Porter* had been tamper'd with, and had 300 *l.* paid him, and 200 *l.* more promis'd him, to go beyond Sea. This made the Presumption very strong, that *Goodman* was sent away by some of Sir *John*'s Friends. So that there was an *Indictment* against him ; *Two Witnesses* were *sworn* upon it, and *proved the Treason* ; and he promis'd from time to time to make *Discoveries*.

Hath my Lord Bishop been *indicted* ? Hath there been any *Oath* made against Him ? Did He ever *impose* upon his Majesty or the Ministry, by *promising* to make any *Discovery* ? Hath He *sent away* any One that was *Witness* against Him ? Since These *Circumstances* were *thought necessary* by the Parliament at That Time to *induce* Them to pass That Act ; and the present Case is not attended with any One of These Circumstances ; This, We humbly conceive, is a Reason, why Your Lordships *should not* pass This Bill.

The greater the Offence is of which any Person is accused, the plainer and clearer the Proof ought to be : And My Lord Coke in his 4th Institute, Page 37. (which I mention'd the other Day) speaking of the Attainder of *Cromwell Earl of Essex*, by Parliament, says ; " The more high and absolute the Jurisdiction of the Court is, the more just and honourable it ought to be in its Proceedings, to give Example of Justice to inferiour Courts."

The Offence charg'd on My Lord Bishop is of the highest Nature ; and This Jurisdiction the most high and absolute : Therefore the Proceedings, without doubt, ought to be the most Just and Honourable.

The Punishment inflicted by This Bill, is the greatest that can be, next to Death itself : For what can be worse, than for a Reverend Prelate of such advanced Years, and of so infirm a Body, to be banish'd into another Country, and be forced to seek his Bread in desolate Places ?

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The Punishment is still much severer to *His Lordship*; who hath saved Nothing to support Himself: For his eminent *Hospitality*, and his extensive *Charity*, tho' they have fitted and prepared Him to live in another *World*, yet have disabled Him from subsisting in another *Country*: There He will Himself want That *Charity*, which He so liberally bestow'd upon Others; and must beg upon his Crutches, or Starve.

As to the *Evidence* offer'd against His Lordship, I humbly apprehend the *Proof* would not be sufficient at *Law* to support an *Indictment* for the lowest Misdemeanor. And will Your Lordships, in Your Great *Wisdom* and *Justice*, convict a *Lord of Parliament*, a *Member of Your own Body*, and subject Him to such severe Punishment, upon *Evidence*, that at *Law* would not be sufficient to convict the meanest Subject of the most minute *Trespass*?

This, I humbly apprehend, will appear to be the Case; when the Charge against my Lord Bishop, and the *Evidence* to support it, have been consider'd.

The Bill recites, " That there was a detestable and horrid Conspiracy for invading his Majesty's Kingdoms with Foreign Forces; for raising a Rebellion; for seizing the Tower, and City of *London*; and for laying violent Hands upon his Majesty's most Sacred Person, and upon his Royal Highness."

As to the seizing the Tower, and the City, and laying violent Hands on the King and Prince; Neither of These Crimes is charged upon My Lord Bishop. But the Charge against His Lordship is, that He hath been deeply concern'd in forming, directing, and carrying on, the wicked and detestable Conspiracy, by traiterously consulting and corresponding with divers Persons to raise an Insurrection within This Realm, and to procure Foreign Forces to invade This Kingdom; and intending to raise a Rebellion, at the time of the Elections; and when the King went to Hanover; and at the Breaking up of the Camp.

As to the first, viz. The sending for Foreign Forces; The Bishop is not charged with being privy to any One of the three Memorials: For *Neynoe* says, He wrote them, and they were dictated to Him by *Kelly*, and *Watson*, whom He suppos'd to be the Earl *Marishal*.

As to the Charge of raising a Rebellion at the Time of the Elections, 'tis founded on a Letter, Sign'd 1378, and directed to Mr. *Jackson*; which the Report says the Committee have good Reason to believe was from the Bishop of *Rocheſter* to the Pretender.

The Letter says, " Notwithstanding This Opportunity is elapsed, I agree with You, another may offer before the End of the Year." And the Observation made upon it is, That it was wrote the 20th of *April*, when most of the Elections were over: So consequently the Opportunity was elapsed.

The Letter of the 20th of *April* is suppos'd to be wrote to the Pretender at *Rome*; It supposeth a Letter to the Pretender had been wrote, taking Notice that an Opportunity was elapsed at the Elections; and that an Answer had been made to That Letter by the Pretender, that Another may offer before the End of the Year: Which must be at least two Months before the Date of the Letter; and That was before the Elections were begun.

As for raising a Rebellion, when the King went to Hanover; It is inferr'd from dark Passages in Letters of the 20th of *May*, 1722, N. S. 9th of *May*, O. S. and 10th of *May*, O. S. which are said to have pass'd between *Dillon*, or his Secretary, and *Kelly*. And by comparing Those Passages, You will observe, what Foundation there is for such a Charge.

In the Letter of the 9th of *May*, O. S. 20th N. S. *Quitwell*, suppos'd to be *Dillon's* Secretary, writes to *Baker*, suppos'd to be *Kelly*, " That if This Post hath not brought an Addition of Three to the Six, formerly  
" come



“ come from *Repney*, it is easy for *Mrs. Jones* to see, what is still wanting for the Purchase She intends to make.”

In the Letter of the 10th of *May*, *O. S. Hatfield*, who is suppos'd to be *Kelly*, writes to *Howell*, who is suppos'd to be *Dillon's* Secretary, “ That the King intends to set out early next Month; if they could then compass Barrels enough, the sooner the Wine comes, the better; *Jones* promises to be a good Customer.”

From hence, and from what *Pancier* said *Skeen* told him, 'twas insinuated, that great Foreign Forces were to be brought in for the Pretender; That great Sums of Money were contributed for That Purpose; and that Those Sums were under the Management of the Bishop of *Rochester*; and all this, because *Quitwell* tells *Baker*, if the last Post did not bring an Addition of three to six, *Mrs. Jones* may see what is still wanting for the Purchase she intends to make.

Now suppose, by *Quitwell* and *Howell* are meant *Dillon's* Secretary; and by *Baker* and *Hatfield*, *Kelly* is intended: And suppose, that by the Addition of three to six, is meant a Remittance of Money; by Wine are meant Soldiers; and by *Mrs. Jones* is meant my Lord Bishop of *Rochester*: Yet can what *Dillon's* Secretary writes to *Kelly*, or what *Kelly* writes to *Dillon's* Secretary, affect the Bishop of *Rochester*? If It can; it is in the Power of any two Men, one residing here, and the other beyond Sea, to take away the Life of any Man breathing. But suppose we can make it appear, as most certainly we shall, that by *Mrs. Jones* cannot be meant the Bishop; then what becomes of This Part of the Charge?

Rep. 47. A. The next thing to support This Charge, is, a Passage in an Extract of a Letter dated the first of May, written from *Quitwell* to *James Baker*; in App. D. 17. which 'tis said, that “ *Mrs. Jones* cannot take a better Time to have himself fitted with an easy Saddle, &c.” If an Extract of a Letter can be of any Weight, and the Construction put upon it is to be allow'd; then the Bishop is turn'd General, or at least a Colonel. For by *Neynoe's* Information and *Plunkett's* Cypher, Saddlers, and Saddles, are Irish Soldiers, and Regiments: So the Bishop is represented as undertaking to raise a Regiment of Irish Soldiers, and to mount on Horseback himself to command them.

As to the Third thing charged, which was, to raise a Rebellion at the Breaking up of the Camp; there is no Pretence of Evidence. So that, upon the whole, there do's not appear to be any Pretence for That Part of the Preamble to the Bill, which chargeth the Bishop with having been deeply concern'd in forming, directing, and carrying on, the Conspiracy.

The next thing charged against His Lordship, is, That he was concern'd in a Correspondence Abroad, and some Transactions at Home, for bringing in the Pretender.

Now as to This, I would observe, that there is not one Witness against His Lordship of any criminal Act; that tho' all his Papers have been seiz'd, yet there appears not any Letter, or Paper, under his Hand, of a criminal Nature; nor any Letter prov'd to be written or receiv'd by Him, which is criminal: Neither is there any Charge of any Meeting or Consultation with any Persons for carrying on This Conspiracy. Indeed He is mention'd as a Member of a Club, call'd the *Burford-Club*, of which the Earl of *Orrery* was said to be Chairman; Which Club (as I apprehend) was never heard of 'till *Layer's* Tryal. This Accusation I know to be false; and never met with any one that believed it: Therefore shall not trouble Your Lordships with any farther Observations upon it, than just to take Notice, that tho' He who made the List hath join'd Me with Persons of great Quality and Honour; yet I presume to say, that my Profession in the Law, as well as my Religion, has given me such a Sense of my Duty, that no Persons whatsoever are great enough to draw me into a Plot against his Majesty and the Government.

I beg



I beg Leave to observe that This Charge is founded, partly upon the *Hearsay* of *Pancier* and *Neynoe*; and partly upon the three Letters dated the 20th of *April*, 1722.

As to the *Hearsay*-Evidence; *Pancier* deposeth, That *Skeen* TOLD HIM, that the Bishop of *Rocheſter* and Lord *North* and *Grey* had the principal Direction of the Conspiracy; That 200,000 *l.* had been raised by Contribution, and was put into the Management of the Bishop; and that it was call'd the *Military Cheſt*. Now can This be Evidence in an *Indictment*, or *Action*, for the moſt minute *Treſpaſs*, or in any *Caſe*? Can it be imagin'd that ſo much Money could be raised among the *Jacobites*? Or that ſuch a Sum could be raised, and not one Contributor diſcover'd? Can it be imagin'd that ſuch a Sum ſhould be entrusted with One Man? Or that My Lord Bishop would be That Man, who would have the Care and Trouble, and run the Hazard, of ſuch a Sum? To which it may be added, that *Skeen*, the only Perſon living, who by any Perſon living is ſaid to have ſaid This, is now in Cuſtody, ready to be examin'd upon Oath, and denies every Word of it.

As to *Neynoe's* Examinations, He ſpeaks only what *Kelly* TOLD HIM; and can what *Kelly* told Him affect the Bishop? Beſides, none of his Examinations are upon Oath, or ſo much as ſign'd by Him; (whereas the Examination of *Goodman*, that was given in Evidence againſt Sir *John Fentwick*, was upon Oath:) All of Them appear to be taken after he was in Cuſtody; under great Apprehenſions, and Terrors; Nay it appears that One of Them was taken the Day before he drown'd Himſelf: And moreover, that only One of Them was read, which was extracted out of Three Examinations mark'd, *A, B, C*, and ſaid to contain the Subſtance. We deſire all the Three Examinations may be produced, and read; and then it will appear, Whether That One contains the whole Subſtance; or whether there be not ſome Things very material omitted: And it will likewiſe appear, that there are ſuch Inconſiſtencies in Them, as will take off their Credit. For in one Place He ſays, He ſaw *Kelly* make Uſe of the Cyphers; and that *Kelly* own'd with great Freedom They were for carrying on a Correſpondence with the Pretender and his Agents; And yet in another Place He ſays, That *Kelly* never open'd himſelf as to the Plot now on Foot; That indeed He had ſeen ſeveral Letters from *Paris* and other Places, but they contain'd nothing material: So that it muſt be ſuppoſed, either that there was no Treasonable Correſpondence carry'd on by *Kelly*; or that *Neynoe* was not ſo great a Confident of *Kelly's* as He pretended.

*Neynoe* ſays, He drew Three Memorials; and the laſt was in December 1721, to the Regent for Five Thouſand Men; That all the Memorials were drawn by the Order of, and dictated by, one *Henry Watſon*, whom he did not know; but took to be the late Earl Marſhal; That *Henry Watſon*, whom he took to be Earl Marſhal, was in England all laſt Spring, and that he lay with him ſeveral Nights.

'Tis very extraordinary that the Earl Marſhal ſhould truſt a mere Stranger to draw three Memorials, and one of them for Five thouſand Men to invade the Kingdom; and that afterwards he ſhould lie with Him ſeveral Nights, and not know who He was.

In one of his Examinations he ſays, The Heads of the Memorials were given Him by *Kelly* and *Watſon*: In another he ſays, they were all drawn by *Watſon*: And 'tis obſervable that the rough Draught, or a Copy of any one of Them, is not produc'd; which certainly, he that intended to turn Evidence, and ſo ſoon after became an Informer, would have done, if there had been any Such.

The Committee are pleas'd in their Report, Page 38, to take Notice, that *Neynoe* ſaid, *Kelly* told Him, that a Lord of the Council gave the Biſhop Notice of his being to be taken up, ſome Days before it happen'd; and



are pleas'd likewise to say, that he afterwards confessed, (as They were inform'd) that in That, and other his Examinations, he endeavour'd all he could to *create Diffidence and Suspensions among his Majesty's Servants*. And what *Credit* can be given, after This, to One, who had so little *Regard to Truth*, as to say *any thing*, tho' never so *false*; to so *wicked a Purpose*, as to create a Misunderstanding among his Majesty's Servants? Especially if one considers how probable it is, that the *Remorse He had upon his Conscience*, occasion'd by the Evidence he had given, and his Dread of the *Shame of being forc'd*, when he came upon his *Oath*, to deny what he had said when he was *not upon his Oath*, were the Reasons of his making away with Himself: And we shall call some Witnesses, who will give a full Account of Him.

We shall call One, who but lately depos'd before Your Lordships, that *Neynoe* told Him, he had said several things to a *great Man*, which he neither would, nor could *swear* without being perjur'd.

I most humbly beg Your Lordships Pardon, for being so particular in a Matter, which I had so lately an Occasion to mention: But This is the Hinge, upon which the Weight of the whole Charge against the Bishop turns; and therefore I doubt not but Your Lordships will excuse me.

The next Charge against my Lord Bishop ariseth from *three Letters*, dated the 20th of *April 1722*. One signed *J. Jones*, innuendo the Bishop; to *Chivers*, innuendo *Dillon*: The second signed *Illington*, innuendo the Bishop; to *Musgrave*, innuendo *Lord Marr*: The third to *Jackson*, innuendo the Pretender; and signed 1378, innuendo the Bishop. These Letters are said to be wrote by *Kelly*, and dictated by the Bishop.

Now as to These Letters, I beg Leave to observe there is *nothing Criminal* appears to be in any one of them: But then 'tis objected, that Two of the Persons are attainted of *Treason*, and are Agents of the Pretender; and 'tis High *Treason* to write to Them: And the Third is the Pretender Himself.

Supposing *Chivers* were *Dillon*, and *Musgrave* were *Marr*; yet Writing to Them in *private Matters*, not *criminal* in Themselves, nor relating to the Pretender, is not *Treason*.

But how comes the *Lord Marr* to be an Agent for the Pretender? He *quitted* the Pretender's *Service* many Years before; and from the Time of quitting his *Service*, till after the Date of Those Letters, had a Pension from his present Majesty. I believe the Counsel for the Bill, and all Mankind, will be at a Loss to tell by what Law Writing to One, who hath *quitted* the Pretender's *Service* so many Years, and who hath subsisted ever since by a Pension from his Majesty, can be an Offence.

Indeed, if it be proved that *Jackson* is the Pretender; I admit, Writing to Him is *Treason*: But if it be proved (as it will beyond all Dispute) that by *Jackson* neither *is*, nor *can be* meant the Pretender; and that my Lord Bishop neither *did*, nor *could*, write or dictate any one of Those Letters; then the whole Charge against my Lord Bishop, founded upon Those Letters, falls to the Ground.

The next Thing I would observe, as to Those Letters, is from the Report, *Page 42*. where the Committee are pleas'd to observe, that the Letter to *Chivers* is, great Part of it, out of Cypher; which seems to allow that the other Part was *in Cypher*. Therefore it was very Necessary, I think, to have *printed* the Letters in the *Cyphers* and *Characters*, in which they were *written*; and also *as they are decypher'd*: Then the Persons accus'd would have had an Opportunity of employing Men skill'd That Way, to see if they were *rightly decypher'd* if This was done in *Coleman's Case*.

The *French Papers*, in the *Appendix*, are printed first in That Language, and then as they are Translated; which was not so necessary as  
Printing



Printing the Letters in Cypher in This Case : Because almost every one understands *French* enough to tell, at first Sight, whether a *French* Letter be rightly translated ; but 'tis impossible for a Man of the greatest Skill in the Art of decyphering, to tell, upon a sudden at the Bar, whether a Letter be rightly decypher'd : So that all a Man hath in the World is to depend upon the Skill and Integrity of the Decyphers : Nor are they Infallible ; for the Witnesses who decypher'd the Letters, admit, that there are some Words in them which they could not decypher ; and Those Words may give a Turn to the whole Sense of the Letters. Nay Mr. *Wills* said, that one of the Numbers he could not decypher stood for *two Words* : He was likewise pleas'd to say, it was *impossible* that the Number he could not decypher could make an Alteration in the Sense ; which is very extraordinary for a Man to *swear* : But if *one* Word could not make an Alteration in the Sense, surely *two* might.

The Writing These Letters is charged upon *Kelly* ; which cannot affect my Lord Bishop, unless they were dictated by Him, or written by his Direction, or Privity ; of which there is no *Pretence* of Proof. And therefore I shall next offer to Your Lordships some Observations upon the Arguments and Circumstances alledged to support This Charge.

It is observed in the *Report*, that the Person who wrote These Letters, speaks of himself as being in *ill Health*, in *great Pain*, under some sad and *melancholy Circumstances*, which he expects will soon blow over ; and from thence 'tis inferr'd it must be the Bishop, because his *Wife* was then Ill, and died in six Days after ; and that he himself was at That time afflicted with the *Gout* : One of the Gentlemen, who was Counsel for the Bill, said, These were Circumstances, that did not happen to *any two Men* in the World at That time : And give Me Leave to instance one other Circumstance, which, I believe, did not happen to any one Man in the World ; which is *writing a Letter of Politicks*, when *his Wife* lay a Dying.

Why These Circumstances must necessarily intend the *Bishop*, more than *any other* Person that was *sick*, and under *Misfortunes*, I cannot apprehend. That *ill Health* must necessarily imply the *Gout* ; and that it must be intended, that *no Man* had the Gout the 20th of April, but the *Bishop* ; that *melancholy Circumstances* necessarily imply a Man's *Wife* being *sick* or *dying* ; and that *no Man* had a Wife sick or dying, but the *Bishop* ; is, in my humble Apprehension, a new Way of arguing.

Another Way of proving These Letters to be wrote by the Bishop, is by the Names and Figures subscribed. For one Letter is subscrib'd, *T. Jones*, and another Letter is subscrib'd, *T. Illington* : And the Report observes, that where-ever *Jones* and *Illington* are named, the Bishop is to be understood. But *why* the Bishop is to be understood by Those Names, *non constat* ; Nor is there any *Pretence* of Evidence : And if we shew (as we infallibly shall) that by Those Names the Bishop *could not be meant*, and that He *could not write*, or *dictate Those Letters* ; then the *Inferences* against the Bishop *from Those Letters*, and from the *Subsequent Correspondence* under Those Names, become of no Force or Weight.

A Third Letter is subscrib'd, 1378 ; which the *Decyphers* say denotes a Person, whose proper Name begins with an *R*. And the Report is pleas'd to inferr, that *it must be* the Bishop of *Rocheſter*. Now why 1378 denotes a Person, whose Name begins with an *R*, the *Decyphers* only know : And We are as much at a Loss to know, why by a Name beginning with *R*, must be intended the Bishop of *Rocheſter*. If That Number appear'd to denote a Name beginning with *R*, and if no Name began with That Letter, but the Bishop of *Rocheſter's* ; there would then, I confess, be some Weight in the Observation.

That



That *Jones* and *Illington* are not the *same Person*, appears from the Letter of the 10th of *May*, from *Hatfield* to *Howel*; where, within the Compass of *two Lines*, they are *distinguished*. For in one Line he saith, *Jones* promiseth to be a good Customer; and in the next Line but one he saith, *Illington* is gone into the Country; which plainly shews them to be distinct Persons. Besides, in the Papers mention'd concerning the Duke of *Norfolk*, His Grace is several times denoted by the Name of *Jones*: In *Layer's* List, Sir *William Ellis* is describ'd by That Name; and in *Plunket's* List *Jones* stands for the *Germans*.

The Evidence to prove *Jones* and *Illington* to denote the Bishop, and the Intimacy between the Bishop and *Kelly*, is the Present of a Dog called *Harlequin*.

The Evidence stands Thus, --- *Rep. 40. E. 35.* " *Hatfield*, who is supposed to be *Kelly*, in his Letter of the 30th of *April* to *Howel*, who is supposed to be *Dillon's* Secretary, writes Thus. Mrs. *Jones* died last Week; pray present my Respects to Mr. *Musgrave* (meaning *Marr*) and let him know, I receiv'd the Present sent by the young Lady; That he had a Leg broken in the Journey: However I will take all the Care imaginable of him; and inform Mr. *Jones* of it, to whom I know any thing from That Quarter will be very acceptable. "

*Hatfield*, in his Letter to *Musgrave* of the 7th of *May* 1722, says; Mrs. *Illington* is in great Tribulation for poor *Harlequin*: However his Obligations to the Lady are as great, as if he had come safe. "

From These Letters 'tis inferr'd, that by *Jones* and *Illington* the Bishop is meant; and that a young Lady sent the Dog to *Kelly* as a Present for the Bishop: And 'tis urged, that Mrs. *Barnes* in her Examination of the 23d of *May*, says, The Dog was not design'd for Her, but for the Bishop of *Rocheſter*; That *Kelly* told her, the Dog was for the Bishop; and that *Kelly* promised to get the Dog for Her, from the Bishop, in Case it did not recover its Lameness.

It is admitted, that Mr. *Kelly* brought such a Dog from *France*; that Mrs. *Barnes* had it; and that its Leg was broken: But that it was design'd for the Bishop, or that the Bishop ever had, or saw it, there is no Pretence of Proof; And my Lord Bishop utterly denies it; and Mr. *Kelly* hath solemnly deny'd it to your Lordships; And instead of its being a Present from a young Lady to the Bishop, Mr. *Kelly* says he bought it of a Surgeon at *Paris*, to give it to Mrs. *Barnes*.

There is one Expression in the Letter of the 7th of *May*, which is remarkable; and, in my humble Opinion, enervates and destroys the Force of all Those Letters relating to the Dog: For it was written four or five Days after the Bishop's Lady was bury'd; and it says, " Mrs. *Illington* is in great Tribulation for poor *Harlequin*: " Mr. *Kelly* was suppos'd to write That Letter, and was supposed to be a Friend of the Bishop's; and could a Friend, could any Man of Common Sense, be guilty of such a foolish and ridiculous Expression? Could any Man say of one of my Lord Bishop's Character, who was in the utmost Affliction for his Lady, that He was in great Tribulation for the breaking of a Dog's Leg? 'Tis evident, he who wrote That Letter, did not know the Bishop's melancholy Circumstances: 'Tis likewise well known, that the Bishop never loved a Dog, nor ever had One.

The next Method of proving Letters upon the Bishop, is by Similitude, and Comparison of Hands; Not by comparing any Paper written by Him with any other Writing; but by producing a Letter suppos'd to be written by Mr. *Kelly* in *August*, and by proving that the three Letters written in *April*, were open'd and copy'd, and sent forward; and that Those Letters were of the same Hand with That produc'd.

It



It was to be hoped, that, since Mr. *Sidney's* Case, the Evidence by *Similitude of Hands* in criminal Prosecutions would never have been offer'd: He was convicted upon *such* Evidence, and for *That Reason* his *Attainder* was *revers'd* in Parliament. And therefore, I humbly hope Your Lordships will not in your *Legislative Capacity* admit *That* to be Evidence in *This* Case, which in *the same Capacity* You were pleas'd to condemn in Mr. *Sidney's*.

In 1695, *Crosby* was indicted for Writing Treasonable Letters; and the Evidence was *Similitude of Hands*; which Evidence was *disallow'd* by the Chief Justice *Holt*, and *Crosby* was acquitted.

In *Francia's* Case, My Lord Chief Baron *Bury* declared *Similitude of Hands* to be *no Evidence*: And if it was not admitted in *Those* Cases, where *Papers* were *produced*, and *proved to be of their own Hand-writing*, and the *Papers* with which they were charged were produced, and compared with *Those* other *Papers*; we presume, Your Lordships will not allow it in *This* Case, where it is carry'd farther than ever it was attempted before.

The Proof, as to *This* Point, stands Thus. --- Three Clerks of the *Post-Office* swear, that the 20th of *April* 1720, *These three Letters* were open'd; That they took Copies of them, and seal'd them up again, and sent them forward; That *four Months* after, another Letter came to the Office, which was stopp'd: *That* is produc'd; and They all swear, they believe the *Three Letters* were the *same Hand-writing* with the Letter produc'd. Now that Men, who never saw a Hand but once, and thro' whose Hands so many Letters pass in a Month, should be able to swear, that three Letters, which were sent in *April* 1720, were of the *same Hand-writing* with a Letter which was stopp'd *four Months* after, is strange and incredible.

I beg Leave farther to observe, that the Clerks of the *Post-Office* own they did not compare the Copies of the three Letters with the *Originals*: And was ever a Copy allow'd to be read; unless the Person who produced it swore that he compar'd it with the *Original*, and that 'twas a true Copy?

It is remarkable, that *Clark*, one of the *Post-Office*, said, It was impossible to write a Hand, that had any Resemblance to *Those* Letters; but yet, he said, the *Figures* bore a *Similitude* to the *Hand-writing*: So that one Hand cannot be like another; but *Figures* may be like a *Hand-writing*.

It is also observable, that the Letter produced is proved to be *Kelly's* Hand writing, only by *Hutchins* the Messenger; who says he had him in his Custody a Week, and saw him write several Letters: And by *Malone*; who proves Mr. *Kelly's* Hand by a Supercription in *French*, and yet owns he cannot read *French*: Whereas, we shall prove by three positive Witnesses, that *This* is not his Hand: Besides; they might have produced the Letter which he wrote to my Lord *Townshend*, which is admitted to be his Hand.

We shall likewise prove by several Witnesses, That at the Time, when the three Letters are said to be written, the *Bishop* was at *Bromley*, and so lame with the Gout, that he could not stir Hand or Foot; that his Lady was dying; that no Person was admitted to him, but two or three Servants; and that Mr. *Kelly* was not at *Bromley* at *That* time, nor for three or four Months before, or after. And therefore, 'tis impossible *Those* Letters should be written, or dictated, by the *Bishop*.

The Evidence of *Wood* the Coachman confirms *This*. For he swore, that he never saw Mr. *Kelly*, 'till he was carry'd to see him in the Tower; and that *Kelly* was not at *Bromley*; that no Stranger was at *Bromley* from the 12th of *April*, till after the 26th, when the *Bishop's* Lady died; and that he must have known it, if there had; that the *Bishop* never sent the Coach



for *Kelly*, or any other Person in *Berry-Street*, or any Place near *Pall-Mall*; so that by This the Examinations of *Elizabeth Levett* and *Neynoe* are quite destroyed.

But 'tis objected, that a Man might put his Horse at an *Inn*, and come to see the Bishop; and *Wood* not know it. Can it be imagined, that *Kelly*, who is supposed to be so particular a Friend of the Bishop's, would leave his Horse at an *Inn*? But we shall examine other Witnesses to This.

It was objected, that on the 10th of *June* the Bells rang; and the Servants had *Roses*. But it appears, most of them were red *Roses*: And if it should be criminal to ring the Bells on the 10th of *June*; we shall shew, that the Bishop knew nothing of the Ringing of the Bells, or of the *Roses*.

In the Report, Page. 50. the Committee of the Commons are pleased to take Notice; "That on the 11th of *June*, *Kelly* sends his Friends at *Paris* an Account of his late Misfortunes; and after complaining of the Neglect in not bailing him out sooner, says, Your Old Friend *Rig*; indeed, offer'd all that could be expected from the poor Man;" and infer, "That by *Rig* is meant the Bishop of *Rochester*."

Can it be imagined, that *Kelly* would call the Bishop *Gerrard's* old Friend; who, 'tis not pretended, ever knew him, or saw him? And if poor Man be taken by way of Contempt; can it be imagined that Mr. *Kelly*, a Gentleman of That good Sense, and Breeding, would use such an Expression of my Lord Bishop? If These Words are taken in the literal Sense, 'tis as improbable; for the Bishop was not taken for a poor Man: Besides, how could He, who had 200,000 *l.* Contribution-Money, and had the Command of the Military Chest, be said to be poor? And I dare say, there is Nobody but believes, that if my Lord Bishop would have intermeddled on Mr. *Kelly's* Behalf, he had Interest enough to procure whatever Bail *Kelly* wanted: And therefore I apprehend, that *Rig* cannot be intended to be the Bishop.

Indeed, no Credit can be given to Cant Names; for the same Names are us'd for several Persons: As *Laws* in *Plunket's* Cypher stands for *Marr*; and in the Cypher found on *Dennis Kelly*, it signifies Mr. *Cesar*. *Hawksby* in *Plunket's* Cypher stands for King *George*: And in the Report, 62. there are Compliments from the Pretender and his Spouse to *Hawksby*; which, I presume, they did not mean for his Majesty. *Jones* is used many times for the Duke of *Norfolk*. It is used for Sir *William Ellis*; and it is also used for the *Germans*; As I before observ'd.

That *Jackson* cannot mean the Pretender, is plain. App. E. 30. A Postscript in the Letter from *Quitwell* to *Vernon* says, "Mr. *Chivers* advises, that the Money you mention, in *Clinton's* Hands, should be equally divided between *Medly* (meaning the late Duke of *Ormond*) and *Jackson*, meaning the Pretender." Now, would Any one devoted to the Pretender's Interest put *Ormond* before the Pretender? *Jackson* is put for the Pretender only in *Plunket's* List: And yet 'tis observable, that *Plunket* in all his Correspondence never calls him *Jackson*, but *Joseph*, or *Jephson*: And in the voluminous Correspondence charged on *Kelly*, He is not once called *Jackson*; but the usual Names are *Jephson* and *Joseph*.

As for the Letter to *Dubois*, it seem'd at first to be a Letter written from France TO the Bishop, by the Name of *Dubois*; and after a Month's time they find it to be a Letter written BY the Bishop. If so; Writing a Letter, and not sending it, can be no Offence. But how comes the Bishop to keep That Letter seal'd, which He had written seven Months before? The Writer of That Letter owns, He had receiv'd One from *Dubois* two Months before, by Mr. *Johnson*; which was the Name *Kelly* went by: And 'tis very strange, that the Bishop should be so weak, as to mention the Name of the very Person, who, 'tis said, used to write his



his Letters, and by whom He was suppos'd to carry on his Correspondence. If it be presum'd that He wrote This Letter; it must also be presum'd, He *was out of his Senses*, when he did it.

That Letter was not signed, and was dated the 16th of Dec. but no Year; tho' they have put the Year 1721 to it. For a Month together they never thought the Letter to *Dubois* to be the Bishop's Hand; tho' they had several of his Letters. As to the Observation made by one of the Gentlemen, that the Letter to *Dubois* was seal'd by a *particular Seal*, and not the Seal with which he sealed such Letters, as He *intended all the World should see*; That Gentleman would do well to let us know, *what Letters were written by the Bishop*, which He intended all the World should see.

That *so many* Letters were written *before 1712*, and so *few, since*; was occasion'd by His Lordship's great Correspondence about Matters of *Learning* at That time, and his being *from* That time often afflicted with the *Gout*, so that he could not write many Letters, and consequently receiv'd but few. Besides; He was made Bishop in 1713, and Dean of *Westminster*: so had not Time to write much Himself, but kept a *Secretary*.

As the Matters before mention'd to be charg'd against my Lord Bishop, arose from Letters suppos'd to be written by him; I shall next consider the Charge against Him, which arises from Letters suppos'd to be written to Him.

There are *Two Letters* mention'd in the Report as written to Him; one of the 11th by *Motfield*, interpreted to be Lord *Marr*, wrote to *Illington*; the other of the 25th of *July* from *Digby*, interpreted *Dillon*, to Mrs. *Weston*.

Now I would observe, That it is not pretended, that Either of Those Letters was ever receiv'd by the Bishop; so consequently must be *intercepted*: Therefore it would have been proper, to have *produced the Letters*, and to have *proved the Hands*.

As to the Letter from *Motfield*; 'tis only a *Compliment of Condolence*; And 'tis inferr'd that it *must be the Bishop*; because his *Lady died* a little before. The Letter says, "We must submit with Resignation, to what the just and great God thinks fit to order; but you know such Things so much better than I do; that I will not trouble you with saying any more upon it." From These last Words it is inferr'd, that This Letter was written to a *Clergyman*, and *consequently the Bishop*.

What Weight This Way of Reasoning will have with Your Lordships in *criminal Prosecutions*, is humbly submitted: But it must be observ'd, that This Letter is said to be an *Answer* to the Letter said to be written the 20th of *April* to *Musgrave*: And as we have shew'd, that it was impossible the Bishop should write or dictate Either of the Letters of the 20th of *April*; the *Answer* must fall with the Letter. But from hence the Observation is natural, and undeniably true; that if *Jones*, who wrote the Letter to *Musgrave* of the 20th of *April*, could not be the *Bishop*; and *Illington*, to whom *Motfield* wrote, be the same as *Jones*; then neither *Jones* nor *Illington* can denote the Bishop.

As to the Letter from *Digby* to Mrs. *Weston*, who is interpreted the Bishop; It was written the 25th of *July*, N. S. Wherein *Digby* says, "I cannot on any reasonable Grounds complain of your Silence, because I am inform'd of the Situation of your Health, and the Concern your Family are in, by Bankrupts, and Law-Suits."

It must be observ'd, that on the 7th of *July*, O. S. G. W. in his Letter to *Digby* says, "I saw Mrs. *Weston* yesterday; she never was better in her Life than now." It is strange, that *Digby* the Week following should take Notice of the ill Situation of Mrs. *Weston's* Health; 'Tis plain both These Letters can't be genuine, and therefore no Credit can be given to such a Correspondence.



One Way of fixing the intercepted Correspondence, and the Cant-Names mention'd therein upon the Bishop, is, by the *Coincidence of Times*, and other *Circumstances*; as of his Lordship being *in Town*, and *out of Town*: And there are several Mistakes in Them. For in *Hatfield's* Letter to *Musgrave* of the 7th of *May*, he says, Mr. *Jones* is come to Town *only for a Day*: If That be to be understood of the Bishop, it is not true; for He came to Town the 5th of *May*, and did not go out of Town till the 10th.

In the Letter from *I. H.* to *Dixwell*, of the 18th of *June*, 'tis said, "Mr. *H. Rig*, and *Rep.* are I hear in the Country." And 'tis said by *Rig* is meant the Bishop: Which cannot be, for the Bishop was then in Town. So in a Letter to *Maisonneuve*, of the 19th of *July*, 'tis said, "*Rig* is in the Country:" Whereas the Bishop was then in Town. This is the more observable; because the *Report*, taking Notice of the Bishop's being ill of the *Gout*, says, *Page* 41. "This Particularity, as also several others, which will be taken Notice of as to the Bishop's being in Town, or in the Country, at the respective Times mention'd in the intercepted Letters, have been carefully enquir'd into." And in the next Paragraph, The *Report*, taking Notice of the Letter to *Musgrave* of the 7th of *May*, which says Mrs. *Jones* is come to Town, says, "This agrees with the Enquiry:" And yet it will plainly appear, that there are such Mistakes, as to Those times, as I have before mention'd.

I hope I may have Leave to observe, that These Mistakes escaped the Observation of the Honourable Committee of the House of Commons; and that tho' the Letter of the 7th of *May*, in the *Appendix*, says, "Mrs. *Jones* is come to Town only for a day;" Yet in the *Report*, the Words *only for a Day* are left out.

All the Circumstances before mention'd are made use of to fix the Names of *Jones* and *Illington* upon my Lord Bishop; and therefore the next Paragraph but one in the *Report* is very observable: Which is This.

"These several Circumstances, joined to *Neynoe's* Declaration, that *Kelly* had told him, the Bishop went sometimes by the Name of *Jones*, and that *Carte* had told him, the Bishop went by the Name of *Illington*, shew, that where-ever *Jones* and *Illington* are named in *Kelly's* Correspondence, the Bishop of *Rocheſter* is to be understood by Those Names."

So that the whole Proof of the Correspondence charged to be carry'd on by my Lord Bishop under the Names of *Jones* and *Illington*, is resolv'd into This; That *Neynoe* DECLARED that *Kelly* and *Carte* TOLD HIM the Bishop went by Those Names.

I beseech Your Lordships, Is This *Proof*? Is This Evidence sufficient to deprive a Reverend Prelate of all his Ecclesiastical Preferments? And to send him into perpetual Banishment? Do the Lives and Liberties of *Englishmen* stand upon so weak a Foundation? If they do; I presume to say they are very *precarious*, and the most *innocent* Man alive cannot say He is *safe*.

I beg your Lordship's Indulgence to observe farther, that This heavy Charge against my Lord Bishop is supported only by *Innuendo's*: And with what an Eye *Innuendo's* have been always look'd upon in *criminal* Cases, many Instances may be given.

I shall trouble your Lordships but with *One*; which is full to This Purpose, and of the greatest Authority: I mean the Resolution of your Lordships in the Case of Sir *Samuel Barnardiston* in 1683. He was prosecuted for writing Letters, alledged to be Seditious, and highly reflecting on the Government, and the Publick Justice of the Nation; and was found guilty, and fined 10,000 *l.* He brought a Writ of Error in This most Honourable House, and your Lordships were pleas'd to reverse That Judgment; for that the Information being grounded on *Letters*, which in themselves were



were *not criminal*, but made so by *Innuendo's*; your Lordships were pleased to declare, that *Innuendo's* and *forced Constructions* ought not to be allowed; for all *Accusations* should be *plain*, and the *Crimes ascertain'd*.

Now if it can be suppos'd, without any *Evidence*, that my Lord Bishop wrote the Letters charged to be written by him; even then this Case is the same with Sir Samuel Barnardiston's. For the Letters are not *criminal* in themselves; nor can be made so but by *Innuendo's*, and *strain'd, forc'd Constructions*. Nay, I presume to say, there is not *one Part* of the Charge but subsists purely by *Innuendo's*, and *strain'd Constructions*.

I will trouble your Lordships with instancing only *one Letter*; which is That of the 20th of *April* written to Mr *Jackson*, and subscribed 1378. With the *Innuendo's* it is Thus. 1378, *Innuendo* a Person whose proper Name begins with an R, *Innuendo* the Bishop of *Rocheſter* did write to Mr. *Jackson*, *Innuendo* the Pretender; that, notwithstanding this Opportunity, *Innuendo* an Opportunity of raising a Rebellion in England at the Time of Elections of Members of Parliament, had elapsed; I, *Innuendo* the Bishop, agree with you, *Innuendo* the Pretender, that another, *Innuendo* another Opportunity of raising a Rebellion in England, may offer before the End of the Year, *Innuendo* at the Breaking up of the Camp. Your Lordships will please to observe what a *Superfetation* of *Innuendo's* (if I may so say) there must be to support This Charge; and without *Innuendo's* no Part of the Charge against the Bishop can be maintain'd: And therefore, I humbly hope that the same Reasons which induced your Lordships to reverse the Judgment against Sir Samuel Barnardiston, will prevail upon you to reject This Bill.

To what I have objected I imagine it will be answered, That your Lordships are now acting in your *Legislative Capacity*, and that in your *Legislative Capacity* you are not bound by the *Forms of Law*: But I humbly submit it, whether you will not think fit to proceed according to the *Rules of Law*, tho' not according to the *Forms* of it.

*Mens Lives*, and *Properties*, are to be try'd and determined *secundum Allegata & Probata*; and the Proof in such Cases must be *Legal Proof*. And I apprehend with great Deference, that when your Lordships proceed in your *Legislative Capacity* in other Instances, you proceed according to the *Rules of Law*: As in Bills for enabling Persons to *sell*, or *settle Estates*; Or for *making Rivers navigable*. If the Title or Property of any Person come in Question, Your Lordships are pleased to hold the Parties to *strict legal Proof*: And why not in Bills of *Attainder*? Are Bills of *Attainder* (whereby *Mens Lives* are forfeited, their *Estates* confiscated, their *Blood* corrupted, and their *Families* undone) of less Moment, than Bills to enable Persons to settle their Estates for the Benefit of their Families? I humbly apprehend that your *Legislative* and *Judicial Capacities* are here so united, that they cannot be separated. For a Bill of *Attainder* is a *Condemnation* by Parliament; and your Lordships always hear and judge, whether a Party be *Guilty*, before you condemn him. Will you then be pleased to judge and determine, upon less Proof in one Case than in another? Can it be conceived that your Lordships will not act by the same Rule in both your Capacities? Or that you will not have an equal *Tenderness* and *Regard* for the *Lives*, *Liberties*, and *Estates* of the Subject in One Capacity, as in the Other?

When a Man flies from Justice, He gives Judgment against himself; and when a Person accused doth by corrupt or indirect Means conceal or convey away the Witnesses against him; then he is the Cause, why strict and legal Proof cannot be had: And That may be a Reason, why less Proof should be admitted. But in Cases not attended with either of These Circumstances, to say that less than Legal Proof is Sufficient for a Bill of *Attainder*, is to affirm that PRIVATE OPINION alone, without Proof,



is a *sufficient Foundation* to pass a Bill of *Attainder*. And how harshly *That* would sound in the Ears of *Englishmen*, is humbly submitted to Your Lordships.

My Lords, By our Law, a *Judge* cannot go according to his own *private Opinion*; but must be govern'd by the *Evidence* given before Him in Court. For the Rule is, *Nil refert, quòd notum sit Judici; si non notum sit in Formâ Judicii*. And if Mens Rights and Liberties were to be determin'd by *private Opinion*; How *precarious* would the *Lives* and *Estates* of *Englishmen* be? The most *innocent* Man could not be safe; The wisest Man could not *foresee*, where it would *end*; and *England* must no longer boast of the Excellency of her Constitution.

It is a Rule, both in Law, and Reason, that *Nemo bis puniri debet pro eodem Delicto*: And yet *That* may happen to be the Bishop's Case. For the *Charge* in the Bill is *general*; intending to *raise a Rebellion*, and holding *Treasonable Correspondence* in order to bring in Foreign Forces: But there is *no particular Fact* charged upon him. Now if he should be *indicted* for either of those Species of *Treason*; and *particular Overt-Acts* of such *Treason* should be alledg'd, as *buying Arms*, and *listing Men* for the *Pretender*, and the *Overt-Acts* should be *proved* by *two Witnesses*; He might be *condemn'd*, and *executed* for it. For he could not *plead This Bill* in *Bar* to such *Indictment*; because the *Indictment* would not be for the *same Facts*; there being *no particular ones* charged in the Bill. And yet it may happen (as I said) that my Lord Bishop may be *indicted* and *try'd* for the *Treason* mention'd in *This Bill*: As in the Case of *Hampden* and *Fitzbarris*, which I lately mention'd. For Mr. *Hampden* was try'd for meeting and consulting to raise a Rebellion, was fined 40,000 *l.* and was afterwards try'd for High-Treason for the same *Fact*: And tho' he insisted on his having been try'd for the same *Fact*, and desired to plead it; yet the Court would not allow it. And in *Fitzbarris's* Case, he was indicted for High-Treason, and pleaded an Impeachment; and averr'd, it was for the same *Fact*: But the Plea was over-ruled: For there being no particular Article, the *Averment* could not be supported; because he could not averr any thing, that was out of Record.

I humbly hope, Your Lordships will excuse Me for taking up so much of your Time. But the *Multifariousness* of the Matters of which the *Accusation* consists, and the *Weight* of the Subject drew me into it. I humbly thank Your Lordships for your great Indulgence and Patience in hearing me: And if as a *Lawyer*, thro' my Zeal for my Client's Service, or as an *Englishman*, asserting Those *Laws*, which I apprehend are the *Security of British Liberties*, I have let drop any Expression, which may be thought improper; I most humbly beg Your Lordships Pardon. And if there be a Difference between your *Legislative* and *Judicial* Capacity: I submit it, whether Your Lordships will be pleased to give *That Judgment* in your *Legislative* Capacity, which the Counsel for the Bill do, in my Apprehension, admit You could not give in your *Judicial*. And therefore I hope, Your Lordships will be pleased to reject *This Bill*.

AFTER the Witnesses for the Bishop were examin'd, Sir Constantine proceeded Thus.

My



My Lords,

WE have done with our Evidence; and hope we have fully answer'd every Part of the Charge contain'd in the Bill, and apprehend there is no one Circumstance left unanswer'd. Particularly, that we have totally destroy'd the Credit of *Neynoe's Hearsay-Evidence*: For when the *Improbabilities, Inconsistencies, and Contradictions*, of His Examinations are consider'd, and the *Testimony* of the *Witnesses* is duly weigh'd; No Person can give the *least Credit* to what He hath said, without offering the greatest Violence imaginable to his Reason.

And it is wonderful, that the Counsel for the Bill should insist he should be credited in *any Thing*: When we have *proved*, he had the Confidence to declare that a *Right Honourable Person* had *endeavour'd* to persuade Him to *accuse* Persons of Quality of Things He *knew nothing of*.

Hath he not said that, when he was to be examin'd, *That Right Honourable Person* had Him first *in private*, and told Him, *what Questions* would be ask'd Him, and *what Answers* He should give? Did he not say, that the very same Gentleman gave Him *five Questions, or Enquiries*, and told Him *what He should reply* to Each of them? Hath He not said, that refusing to give Evidence, He was *threatned* with *Newgate*; and that *Thereupon* He gave Them *Informations* against *My Lord Bishop* and *Others*? Nay, had He not the Impudence to say, that the *same Right Honourable Person* offer'd Him *2000 l. 500 l. per annum*, and a *Place*, to *accuse* the *protesting Lords*, the *Earl of Orrery*, and *This Reverend Prelate*? And that being ask'd whether He *knew any Thing of the Plot*, He swore *No*: Nor *Anybody else*; But that he knew of *two other Plots*, viz. One of *Mr. Walpole* against the *Protesting Lords*; the *Other* of *Himself* upon *Mr. Walpole*, to get *2000 l.* of Him? Nay, it is *proved* He declared that the *same Gentleman* press'd Him *so hard* to *accuse some Persons*; that He had it once in his Mind to take up *That Right Honourable Person's Sword*, and *run Him thro'* with it; and so make an End of the *Plot*.

These are Things which have been *proved* upon *Neynoe*: And all These Things being consider'd, I believe the Counsel for the Bill will readily agree with Me, that *no Credit* ought to be given to one Word He has said: And if *His Evidence* be laid aside; the greatest Part of the *Charge* against my Lord Bishop *falls to the Ground*.

My Lords, The Evidence *Mr. Lewis* gave, was very material. For he shew'd Your Lordships, that *Brockett*, who was of the Post-Office, was so skilful in *counterfeiting Hands and Seals*; that he wrote the *Superscription* of a Letter, and took the *Impression* of a Seal, and seal'd it again; and did it so well, and gave it such a *Lustre*, that *Mr. Lewis* could not distinguish it from the Original.

The *Engravers* likewise said, They could take off the *Impressions* of *Seals* so well, that they could not be distinguish'd: Nay, tho' the *Wax* were broken, yet if no Part of the *Wax* were lost; It might be done.

Your Lordships observe how the *Engravers* themselves were mistaken in relation to some *Impressions*, which were produced to them: And You farther observe, that the Seal in Question was a *Cicero's Head*, which all the *Engravers* agree to be a very *common* one; and they had many of Them: So that no *Objection* can be made against my Lord on Account of That Seal. Nay, one of the *Engravers* said, it appear'd to him that the *Seals* of the *two Letters* were not the same.

As to the *Dog*; there is *Mr. Crawford's Certificate*, and *Birmingham's Affidavit*.

As to *Mrs. Barnes's Evidence*; she hath found out now, that there were *Two Dogs*, tho' Nobody else ever heard of *Two*. She said, the First was for the Bishop of *Rocheſter*. Now it is plain, the *First* was sent in *March*;



*March*; and it was *His Leg that was broken*: And *Birmingham* swears, and *Mr. Kelly* solemnly affirms, that it was for *Mrs. Barnes*, and not for the *Bishop*.

As to the *Three Letters* of the 20th c<sup>t</sup> *April*; We have proved it impossible that the *Bishop* should write, or dictate, Those Letters to *Mr. Kelly*. And Your Lordships take Notice, how the *Butler* came to observe Those Letters could not be written by the *Bishop*; And the Servants, tho' under Confinement, and not permitted to see any Body, agree in their Evidence. There is *Gordon's* Affidavit that he never had such a Pacquet: And *James Talbot* was here in Town the 29th of *April*.

Thus, Your Lordships observe, that a *Bill* of the most extraordinary Nature that ever was seen, hath been supported by the most extraordinary Evidence, that ever was heard: And we hope, we have set the dark Passages, of which the Charge is compounded, in such a Light; that every One may plainly see the Right Reverend Prelate is not guilty of any One Offence charged against Him.



F I N I S.



